

THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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THE UNITED STATES OF AMERICA,

Case No. 1:20-CR-183

Plaintiff,

v.

Hon. Robert J. Jonker  
Chief U.S. District Court Judge

KALEB FRANKS,

Defendant.

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**DEFENDANT'S RENEWAL OF MOTION TO COMPEL DISCOVERY**

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With the government's recent production of volumes of discovery, defendant Mr. Kaleb Franks, through his attorney Scott Graham, has discovered materials that reveal the government's awareness of its confidential human sources' overreaching in this case, as discussed in a separate supplement to the defense's motion to dismiss. These materials now affirm Mr. Franks's earlier position that the government's CHS files for its investigation of this matter contain materials discoverable and necessary for the preparation of a defense under *Brady* and Rule 16.

Mr. Franks now renews his motion to compel the government's production of the full CHS files for this investigation. *See RE. 258: Motion for Disclosure, PageID # 1400-17.* Defendant has touched on these matters before, of course. *See, e.g., id.* at 1405 (noting that "*Brady* and Federal Rule of Criminal Procedure 16 do not end the government's obligations at, or relate only to, exculpatory evidence"). Courts routinely observe that defendants are entitled to materials related to *preparing a*

*defense.* In *United States v. Pesaturo*, 519 F. Supp. 2d 177, 189 (D. Mass. 2007), the court found that, although the content of the conversations the defense sought appeared “to undermine the defense, under Rule 16 the Defendant is entitled to relevant evidence, even if inculpatory.” The defense did not have to show that the materials sought (namely statements) were material or exculpatory because Rule 16’s mandatory discovery provisions aimed at contributing to the fair and efficient administration of justice through providing the defense with sufficient information upon which to base an informed plea and litigation strategy; by facilitating the forming of objections to admissibility before trial; by minimizing the undesirable effects of surprises at trial; and by contributing to the accuracy of the fact-finding process. *Pesaturo*, 519 F. Supp. 2d at 189. In *Pesaturo*, the court ordered the government to produce “recordings of the Defendant’s conversations with the confidential informant.” *Id.*

The materials in the CHS files here clearly contain information necessary for preparation of a defense, as evidenced by the memo discussed in Mr. Franks’s supplement to the defense motion to dismiss here. The memo discussed in Mr. Franks’s supplement contains exculpatory evidence like admissions by government agents related to CHS overreaching. The files should contain evidence corroborating and explaining matters alluded to in that memo, things like the actual authorizations to engage in illegal conduct and notes related to the apparently retroactive authorization granted *after* the CHS had already broken the law.

***Conclusion***

Based on these points and those already raised in his original motion, following filings, and related proceedings, Mr. Franks renews his motion to compel production of the full CHS files for the investigation of this matter. *See* RE. 258: Motion for Disclosure, PageID # 1400-17; RE. 324: Minutes of Hrg. on Motion for Disclosure, PageID # 1940; RE 325: Order Denying, PageID # 1941; RE. 343: Appeal of Magistrate Judge's Order, PageID # 2136-49; RE. 351: Order Affirming, PageID # 2212-13.

Respectfully submitted,

Date: January 12, 2022

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**CERTIFICATE OF COMPLIANCE**

In accordance with Local Criminal Rule 47.2(b)(ii), counsel asserts that this brief contains 487 words, as counted by Microsoft Word, version 16.50.

Date: January 12, 2022

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